



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 30, 1996

Mr. Frank Lopez  
Lewis and Collins  
1220 Montana Avenue  
El Paso, Texas 79902

OR96-1335

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100539.

The Ysleta Independent School District (the "district"), which you represent, received a request for the following information:

1. Records, documents, or reports of allegations made by students involving sexual or physical abuse made against school teachers, counselors or other school district employees since 1991.
2. The total number of sexual and physical abuse allegations made against school teachers, counselors or other school district employees listing each year from 1991 to current.
3. The number of sexual abuse allegations made against school teachers, counselors or other district employees for each year from 1991 to current. Also the number of allegations that were substantiated for each of these years, and the administrative or other discipline measures, if any, taken against the school teacher, counselor or other school employee.
4. The number of physical abuse allegations made against school teachers, counselors or other district employees for each year from 1991 to current. Also the number of allegations that were substantiated for each of these years, and the administrative or other

disciplinary measures, if any, taken against the school teacher, counselor or other school employee.

You assert that a certain portion of the requested records is excepted from required public disclosure by section 552.101 of the government Code. You have submitted to this office the documents that the district seeks to withhold.

It appears that the records you seek to withhold are excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. This office has recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We remind you that this ruling applies only to "education records" under FERPA. "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).<sup>1</sup> If you have further questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 (1995) at 4, n.6, 8. We believe that this ruling is dispositive as to the records that are excepted from required public disclosure by FERPA or section 552.114 of the Government Code.<sup>2</sup>

---

<sup>1</sup>*But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). *See also* Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).

<sup>2</sup>The district is not required to submit copies of education records to this office. *See* Open Records Decision No. 634 (1995) at 10 (if district does not make a determination but seeks determination from this office, district must first obtain parental consent to disclose personally identifiable information or must edit records to protect personally identifiable information).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 100539

Enclosures: Submitted documents

cc: Mr. Raul Hernandez  
El Paso Times Reporter  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)

Ms. Paula Moore  
El Paso Times Managing Editor  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)

---

We also note that the information at issue here may be subject to section 261.201(a) of the Family Code. Section 261.201(a) of the Family Code generally provides for confidentiality of a report of alleged or suspected abuse and for the information used or developed in an investigation of alleged or suspected abuse. *See also* Open Records Decision Nos. 628 (1994) (identities of juvenile victims of serious sexual offenses are protected by common-law privacy as incorporated into section 552.101; identities of juvenile victims of other crimes and accidents are not protected by common-law privacy, but may be protected by constitutional privacy); 440 (1986), 393 (1983).